

MONTANA LEGISLATIVE HISTORY

Chapter 482 19 95Bill H _____ S 66 Original bill & history / cH. Committee on JudiciaryHearing Date(s) Mar 02 ✓ cMar 15 ✓ c

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Date Out _____ c

S. Committee on JudiciaryHearing Date(s) Jan 13 ✓ cJan 30 ✓ c

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Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

SB 66 INTRODUCED BY LYNCH, ET AL.

PROVIDE THAT A PERSON CONVICTED OF A SPECIFIED NUMBER OF
MAJOR VIOLENT OFFENSES MUST BE SENTENCED TO LIFE IN PRISON
UNLESS THE DEATH PENALTY IS APPLICABLE AND IMPOSED

1/07	INTRODUCED		
1/07	FIRST READING		
1/07	REFERRED TO JUDICIARY		
1/09	FISCAL NOTE REQUESTED		
1/13	FISCAL NOTE PRINTED		
1/13	HEARING		
1/13	FISCAL NOTE RECEIVED		
1/31	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/01	2ND READING PASSED	47	3
2/02	3RD READING PASSED	44	4
	TRANSMITTED TO HOUSE		
2/03	FIRST READING		
2/03	REFERRED TO JUDICIARY		
3/07	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/29	2ND READING CONCURRED AS AMENDED	80	18
3/30	3RD READING CONCURRED	82	17
	RETURNED TO SENATE WITH AMENDMENTS		
4/05	2ND READING AMENDMENTS CONCURRED	50	0
4/06	3RD READING AMENDMENTS CONCURRED	47	3
4/08	SIGNED BY PRESIDENT		
4/10	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 482		
	EFFECTIVE DATE: 07/01/95—SECTIONS 19-21		
	EFFECTIVE DATE: 07/01/97—SECTIONS 1-18		

SB 67 INTRODUCED BY LYNCH, ET AL.

EXEMPT FROM THE INSURANCE PRODUCER AND CONSULTANT
CONTINUING EDUCATION REQUIREMENTS AN INSURANCE LICENSEE
WHO IS 70 YEARS OLD OR OLDER AND WHO HAS 35 YEARS OF
LICENSURE IN GOOD STANDING

1/07	INTRODUCED		
1/07	FIRST READING		
1/07	REFERRED TO BUSINESS & INDUSTRY		
1/17	HEARING		
1/18	COMMITTEE REPORT—BILL PASSED		
1/19	2ND READING PASSED	38	11
1/20	3RD READING PASSED	39	11
	TRANSMITTED TO HOUSE		
1/23	FIRST READING		
1/23	REFERRED TO BUSINESS & LABOR		
1/26	HEARING		
1/27	TABLED IN COMMITTEE		
	DIED IN COMMITTEE		

SB 68 INTRODUCED BY LYNCH, ET AL.

REVISE LAWS RELATING TO GROSS VEHICLE WEIGHT LIMITATIONS

1/07	INTRODUCED		
1/07	FIRST READING		
1/07	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/17	HEARING		

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SENATE

INTRODUCED BY

SPONSOR

BILL NO. 66

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PERSON CONVICTED OF TWO MAJOR VIOLENT OFFENSES MUST BE SENTENCED TO LIFE IN A STATE PRISON UNLESS THE DEATH PENALTY IS APPLICABLE AND IMPOSED; PROVIDING THAT THE LIFE SENTENCE BE SERVED ONLY IN A STATE PRISON AND BE SERVED WITH NO POSSIBILITY OF PAROLE OR EARLY RELEASE ON ANY GROUNDS; AND AMENDING SECTIONS 45-5-102, 45-5-103, 45-5-302, 45-5-303, 45-5-401, 45-5-503, 45-6-103, 46-18-111, 46-18-201, 46-18-222, 46-18-225, 46-18-502, 46-23-201, AND 46-23-411, MCA."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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NEW SECTION.

Section 1. Life sentence without possibility of release. (1) Except as provided in 46-18-222, if a person convicted of one of the following offenses was previously convicted of one of the following offenses or of an offense under the laws of another state or of the United States that, if committed in this state, would be one of the following offenses, the person must be sentenced to life in a state prison, unless the death penalty is applicable and imposed:

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- (a) 45-5-102, deliberate homicide;

(b) 45-5-103, mitigated deliberate homicide;

(c) 45-5-302, kidnapping;

(d) 45-5-303, aggravated kidnapping;

(e) 45-5-401, robbery;

(f) 45-5-503, sexual intercourse without consent; or

(g) 45-6-103, arson.

(2) Except as provided in 46-18-222 and 46-23-210, a person sentenced under subsection (1):

(a) shall serve the entire sentence;

(b) shall serve the sentence in a state prison;

(c) may not for any reason be transferred for any length of time to another type of institution, facility, or program;

(d) may not be paroled; and

(e) may not be given time off for good behavior or otherwise be given an early release for any reason.

Section 2. Section 45-5-102, MCA, is amended to read:

"45-5-102. Deliberate homicide. (1) A person commits the offense of deliberate homicide if:

(a) ~~he~~ the person purposely or knowingly causes the death of another human being; or

(b) ~~he~~ the person attempts to commit, commits, or is legally accountable for the attempt or commission of robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious escape, felony assault, aggravated assault, or any other forcible felony and in the course of the forcible felony or flight thereafter, ~~he~~ the person or any person legally accountable for the crime causes the death of another human being.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 46-18-301 through 46-18-310, by life imprisonment, or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-222 and [section 1]."

Section 3. Section 45-5-103, MCA, is amended to read:

"45-5-103. Mitigated deliberate homicide. (1) A person commits the offense of mitigated deliberate homicide when ~~he~~ the person purposely or knowingly causes the death of another human being but does so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of ~~such~~ the explanation or excuse ~~shall~~ must be determined from the viewpoint of a reasonable person in the actor's situation.

(2) It is an affirmative defense that the defendant acted under the influence of extreme mental or emotional stress ~~for which there was reasonable explanation or excuse, the reasonableness of which shall be determined from the viewpoint of a reasonable person in the actor's situation~~ as provided in subsection (1). This defense constitutes a mitigating circumstance reducing deliberate homicide to mitigated deliberate homicide and must be proved by the defendant by a preponderance of the evidence.

(3) Mitigated deliberate homicide is not an included offense of deliberate homicide as defined in 45-5-102(1)(b).

(4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except

as provided in 46-18-222 and [section 1]."

Section 4. Section 45-5-302, MCA, is amended to read:

"45-5-302. Kidnapping. (1) A person commits the offense of kidnapping if ~~he~~ the person knowingly or purposely and without lawful authority restrains another person by either secreting or holding ~~him~~ the other person in a place of isolation or by using or threatening to use physical force.

(2) A person convicted of the offense of kidnapping shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined not more than \$50,000, except as provided in 46-18-222 and [section 1]."

Section 5. Section 45-5-303, MCA, is amended to read:

"45-5-303. Aggravated kidnapping. (1) A person commits the offense of aggravated kidnapping if ~~he~~ the person knowingly or purposely and without lawful authority restrains another person by either secreting or holding ~~him~~ the other person in a place of isolation or by using or threatening to use physical force, with any of the following purposes:

- (a) to hold for ransom or reward or as a shield or hostage;
- (b) to facilitate commission of any felony or flight thereafter;
- (c) to inflict bodily injury on or to terrorize the victim or another;
- (d) to interfere with the performance of any governmental or political function; or
- (e) to hold another in a condition of involuntary servitude.

(2) Except as provided in 46-18-222 and [section 1], a person convicted of the offense of aggravated kidnapping shall be punished by death or life imprisonment as provided in 46-18-301 through 46-18-310 or be imprisoned in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than \$50,000, unless ~~he~~ the person has voluntarily released the victim alive, in a safe place, and ~~not suffering from~~ with no serious bodily injury, in which event ~~he~~ the person shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined not more than \$50,000."

Section 6. Section 45-5-401, MCA, is amended to read:

"45-5-401. Robbery. (1) A person commits the offense of robbery if in the course of committing

1 a theft, ~~be~~ the person:

2 (a) inflicts bodily injury upon another;

3 (b) threatens to inflict bodily injury upon any person or purposely or knowingly puts any person
4 in fear of immediate bodily injury; or

5 (c) commits or threatens immediately to commit any felony other than theft.

6 (2) A person convicted of the offense of robbery shall be imprisoned in the state prison for a term
7 of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except as
8 provided in 46-18-222 and [section 1].

9 (3) "In the course of committing a theft", as used in this section, includes acts ~~which~~ that occur
10 in an attempt to commit or in the commission of theft or in flight after the attempt or commission."
11

12 **Section 7.** Section 45-5-503, MCA, is amended to read:

13 **"45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual
14 intercourse without consent with another person commits the offense of sexual intercourse without
15 consent. A person may not be convicted under this section based on the age of the person's spouse, as
16 provided in 45-5-501(1)(b)(iii).

17 (2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison
18 for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except
19 as provided in 46-18-222 and [section 1].

20 (3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the
21 victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse
22 without consent, the offender shall be imprisoned in the state prison for any term of not less than 2 years
23 or more than 40 years and may be fined not more than \$50,000, except as provided in 46-18-222 and
24 [section 1]. An act "in the course of committing sexual intercourse without consent" includes an attempt
25 to commit the offense or flight after the attempt or commission.

26 (b) If two or more persons are convicted of sexual intercourse without consent with the same
27 victim in an incident in which each offender was present at the location where another offender's offense
28 occurred during a time period in which each offender could have reasonably known of the other's offense,
29 each offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 40
30 years and may be fined not more than \$50,000, except as provided in 46-18-222 and [section 1].

1 (4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial
2 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall
3 require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from
4 the offense. The amount, method, and time of payment must be determined in the same manner as
5 provided for in 46-18-244."

6
7 **Section 8.** Section 45-6-103, MCA, is amended to read:

8 "45-6-103. Arson. (1) A person commits the offense of arson when, by means of fire or
9 explosives, ~~he~~ the person knowingly or purposely:

10 (a) damages or destroys an occupied structure ~~which~~ that is property of another without consent;
11 or

12 (b) places another person in danger of death or bodily injury, including a firefighter responding to
13 or at the scene of a fire or explosion.

14 (2) A Except as provided in [section 1], a person convicted of the offense of arson shall be
15 imprisoned in the state prison for ~~any~~ a term not to exceed 20 years or be fined an amount not to exceed
16 \$50,000, or both."

17
18 **Section 9.** Section 46-18-111, MCA, is amended to read:

19 "46-18-111. **Presentence investigation -- when required.** (1) Upon the acceptance of a plea or
20 upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation
21 officer to make a presentence investigation and report. The district court shall consider the presentence
22 investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502,
23 45-5-503, 45-5-504, 45-5-505, or 45-5-507, or under 45-5-625 involving a victim who was less than 16
24 years of age when the offense was committed, the investigation must include an evaluation of the
25 defendant and a recommendation as to treatment of the offender in the least restrictive environment,
26 considering community safety and offender needs, unless the defendant was sentenced under [section 1].
27 The evaluation must be completed by a person who is determined to be qualified under guidelines
28 established by the department of corrections and human services. All costs related to the evaluation must
29 be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs
30 related to the evaluation are the responsibility of the district court and must be paid by the county or the

1 state, or both, under Title 3, chapter 5, part 9.

2 (2) Unless the court makes a finding that a report is unnecessary, a defendant convicted of any
3 offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be
4 sentenced before a written presentence investigation report by a probation officer is presented to and
5 considered by the district court. The district court may, in its discretion, order a presentence investigation
6 for a defendant convicted of a misdemeanor."

7
8 **Section 10.** Section 46-18-201, MCA, is amended to read:

9 **"46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of
10 an offense upon a verdict or a plea of guilty, the court may:

11 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
12 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
13 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.
14 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
15 period of the deferred imposition. Reasonable restrictions or conditions may include:

- 16 (i) jail base release;
17 (ii) jail time not exceeding 180 days;
18 (iii) conditions for probation;
19 (iv) restitution;
20 (v) payment of the costs of confinement;
21 (vi) payment of a fine as provided in 46-18-231;
22 (vii) payment of costs as provided in 46-18-232 and 46-18-233;
23 (viii) payment of costs of court-appointed counsel as provided in 46-8-113;
24 (ix) with the approval of the facility or program, an order that the offender ~~to~~ be placed in a
25 community corrections facility or program as provided in 53-30-321;
26 (x) community service;
27 (xi) home arrest as provided in Title 46, chapter 18, part 10;
28 (xii) any other reasonable conditions considered necessary for rehabilitation or for the protection
29 of society; or
30 (xiii) any combination of the above.

1 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
2 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
3 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
4 restrictions or conditions may include any of those listed in subsection (1)(a).

5 (c) impose a fine as provided by law for the offense;

6 (d) require payment of costs, as provided in 46-18-232, or payment of costs of court-appointed
7 counsel as provided in 46-8-113;

8 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
9 the defendant to the department of corrections and human services for placement in an appropriate
10 correctional institution or program;

11 (f) with the approval of the facility or program, order the offender to be placed in a community
12 corrections facility or program as provided in 53-30-321;

13 (g) impose any combination of subsections (1)(b) through (1)(f).

14 (2) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be
15 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for
16 a felony, regardless of whether any other conditions are imposed.

17 (3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court
18 shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence
19 or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail
20 or home arrest time already served.

21 (4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
22 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
23 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),
24 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

25 (5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence
26 of imprisonment imposed under 45-5-102 may not be deferred or suspended.

27 (6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred
28 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
29 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
30 suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense, as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or the women's correctional center, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

(11) Except as provided in 46-18-222, a provision of this section that conflicts with [section 1] does not apply to a person sentenced under [section 1]."

Section 11. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state, [section 1], and the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(4) through (6), 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which the defendant is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which the defendant is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the defendant, at the time of the commission of the offense for which the defendant is to be

1 sentenced, was acting under unusual and substantial duress, although not such duress as would constitute
2 a defense to the prosecution;

3 (4) the defendant was an accomplice, the conduct constituting the offense was principally the
4 conduct of another, and the defendant's participation was relatively minor;

5 (5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual
6 element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the
7 commission of the offense; or

8 (6) the offense was committed under 45-5-502(3) and the court determines that treatment of the
9 defendant in a local community affords a better opportunity for rehabilitation of the defendant and for the
10 ultimate protection of society, in which case the court shall include in its judgment a statement of the
11 reasons for its determination."

12
13 **Section 12.** Section 46-18-225, MCA, is amended to read:

14 **"46-18-225. Criteria for sentencing nonviolent felony offenders.** Prior to sentencing a nonviolent
15 felony offender to whom [section 1] does not apply to a term of imprisonment in the state prison or the
16 women's correctional center, the court shall take into account whether:

17 (1) the interests of justice and the needs of public safety truly require the level of security provided
18 by imprisonment of the offender in the state prison or the women's correctional center;

19 (2) the needs of the offender can be better served in the community or in a facility or program
20 other than the state prison or the women's correctional center;

21 (3) there are substantial grounds tending to excuse or justify the offense, though failing to establish
22 a defense;

23 (4) the offender acted under strong provocation;

24 (5) the offender has made restitution or will make restitution to the victim of the offender's criminal
25 conduct;

26 (6) the offender has no prior history of conviction for a criminal act or has led a law-abiding life for
27 a substantial period of time before the commission of the present crime;

28 (7) the offender's criminal conduct was the result of circumstances that are unlikely to recur;

29 (8) the character and attitude of the offender indicate that the offender is likely to commit another
30 crime;

(9) the offender is likely to respond quickly to correctional or rehabilitative treatment; and

(10) imprisonment of the offender would create an excessive hardship on the offender or the offender's family."

Section 13. Section 46-18-502, MCA, is amended to read:

"46-18-502. Sentencing of persistent felony offender. (1) Except as provided in [section 1] and subsection (2) of this section, a persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 100 years or shall be fined an amount not to exceed \$50,000, or both, if ~~he~~ the offender was 21 years of age or older at the time of the commission of the present offense.

(2) If the offender was a persistent felony offender, as defined in 46-18-501, at the time of ~~his~~ the offender's previous felony conviction, less than 5 years have elapsed between the commission of the present offense and either the previous felony conviction or the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction, and ~~he~~ the offender was 21 years of age or older at the time of the commission of the present offense, ~~he~~ the offender shall, except as provided in [section 1], be imprisoned in the state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount not to exceed \$50,000, or both.

(3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence imposed under subsection (1) or the first 10 years of a sentence imposed under subsection (2) may not be deferred or suspended.

(4) Any sentence imposed under subsection (2) ~~shall~~ must run ~~consecutive~~ consecutively to any other sentence imposed."

Section 14. Section 46-23-201, MCA, is amended to read:

"46-23-201. Prisoners eligible for nonmedical parole. (1) Subject to the restrictions contained in subsections (2) through (5), the board may release on nonmedical parole by appropriate order any person confined in the Montana state prison or the women's correctional center, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2) or [section 1], when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) A prisoner serving a time sentence may not be paroled under this section until the prisoner has

1 served at least one-half of the prisoner's full term, less the good time allowance provided for in 53-30-105.
2 Except as provided in subsection (3), a prisoner designated as a nondangerous offender under 46-18-404
3 may be paroled after the prisoner has served one-quarter of the prisoner's full term, less the good time
4 allowance provided for in 53-30-105. Any prisoner serving a time sentence may be paroled after the
5 prisoner has served 17½ years of the sentence.

6 (3) A prisoner serving a time sentence under 45-9-109 may not be paroled until the prisoner has
7 served at least one-half of the full term, less the good time allowance provided for in 53-30-105.

8 (4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has
9 served 30 years, less the good time allowance provided for in 53-30-105.

10 (5) A parole may be ordered under this section only for the best interests of society and not as an
11 award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when
12 the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

13 (6) Whenever the department of corrections and human services certifies to the board that the
14 population at either the male or female correctional facility has exceeded its designed capacity for 30
15 consecutive days, the board shall consider the respective male or female prisoners under the jurisdiction
16 of the department eligible for parole 120 days prior to the eligibility dates provided for in subsections (2)
17 through (4).

18 (7) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial
19 12 months of incarceration, the provisions of subsection (6) do not apply."
20

21 **Section 15.** Section 46-23-411, MCA, is amended to read:

22 **"46-23-411. Application to participate -- eligibility.** (1) Any prisoner, except a prisoner serving
23 a sentence imposed under 46-18-202(2) or [section 1], may ~~make application~~ apply to participate in the
24 supervised release program if ~~he~~ the prisoner has served at least one-half of the time required to be
25 considered for parole and not more than 24 months remain before ~~he~~ the person is eligible for parole.

26 (2) Prisoners serving sentences under [section 1] or with the restriction imposed under
27 46-18-202(2) are not eligible for participation in the program.

28 (3) In order to be accepted into the program, an applicant must qualify under the rules established
29 by the department."
30

1 **NEW SECTION.** **Section 16. Codification instruction.** [Section 1] is intended to be codified as an
2 integral part of Title 46, chapter 18, and the provisions of Title 46 apply to [section 1].

3 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0066, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill providing that a person convicted of two major violent offenses must be sentenced to life in a state prison unless the death penalty is applicable and imposed, and providing that the life sentence be served only in a state prison and be served with no possibility of parole or early release on any grounds.

ASSUMPTIONS:

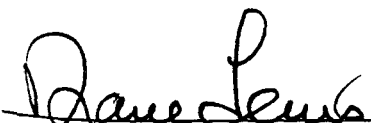
1. The Department of Corrections and Human Services (DCHS) will experience no fiscal impact for the 1997 biennium. Offenders with two separate convictions for the crimes defined in this bill are included in the DCHS proposed biennium Executive Budget. These offenders would be incarcerated within MSP without the passage of this bill during the 1997 biennium.
2. The FY90-FY94 average number of annual prison admissions of offenders with two separate convictions for the crimes defined in this bill is eight(8).
3. The average age of prison admissions over the past five years for persons with two or more court trials of the crimes defined in this bill is approximately 31 years of age.
4. Assuming that an inmate lives to the age of 70 years, Montana State Prison (MSP) will be responsible for offenders sentenced under the provisions of this bill for approximately 40 years each.

FISCAL IMPACT:

No fiscal impact in this biennium; however, there will be significant long-term financial impacts.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. Assuming that DCHS is required to care for inmates sentenced under the provisions of this bill until they are approximately 70 years old, and with the addition of eight inmates per year under the condition of no possible parole, the average age of incarcerated inmates will increase. The average medical costs for older inmates is higher than the average medical costs for younger inmates, thus the average medical costs for inmates will increase considerably due to this age composition of the inmate population.
2. MSP is currently running close to its maximum capacity and well over its designed capacity. An additional eight admissions per year with no opportunity for parole will eventually require the premature movement of higher security profile inmates to the low security compound to free up the high security compound beds for the new admissions.
3. The increase in correctional system population due to this bill would require construction of an additional high security housing unit every 10-15 years at an estimated cost of \$4-\$5 million based on FY94 dollars.
4. A close custody unit would require an additional 26.00 FTE at a general fund cost of \$1,184,936 each year to operate based on FY94 dollars. (80 X \$40.58 X 365 days)
5. The nature of the life sentence as proposed in this bill means that an 80 bed high security housing unit will be needed within 10-15 years and would be occupied with permanent residents with no possible parole.

 1-13-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1/13/95
JOHN J.D. LYNCH, PRIMARY SPONSOR DATE

Fiscal Note for SB0066, as introduced

SB 66

SENATOR BRUCE CRIPPEN questioned whether the designated driver does not have control of the six pack found in a car. Ms. Baker stated that determination needs to be made in a case by case basis but it is certainly possible that the driver could be charged. She understands there will be a proposal introduced for a statewide open container law which would prohibit open containers in the car. SENATOR CRIPPEN questioned when the six month period of incarceration would be used. Ms. Baker remarked the six month jail sentence would only be allowed for a third or subsequent offense when the person is over 18. In researching this bill, she found instances of 23rd and 24th offenses for possession. The six month period was provided so the judge would have some discretion where the youth is old enough to be sentenced to jail. Often these are the youth who are providing alcohol to the younger kids.

Closing by Sponsor:

SENATOR GAGE stated we owe our youth the effort to try to shape them and keep them out of as much trouble as we can. Hopefully, this bill will help them as well as the law enforcement people in the state.

Additional exhibits handed out for SB 64, EXHIBIT 5, 6, 7, & 8.

{Tape: 1; Side: A; Approx. Counter: 43.7}

HEARING ON SB 66

Opening Statement by Sponsor:

SENATOR J. D. LYNCH, Senate District 19, presented SB 66. He stated that he had visited with many people in his town who couldn't understand for one minute why people should get three opportunities to commit some of the most dastardly deeds. In the state of Georgia, by public initiative and by a vote of 82 to 18 percent, over one million people decided that those of us in elective offices had not done enough when it comes to the "meanest of the mean". He believes the vote would be similar if we did the same thing in Montana. SB 66 is completely based after the Georgia initiative and lists the crimes covered by this bill. After being convicted a second time by a jury of their peers, they should not be able to be in society again. He feels the people of this state are saying enough is enough. This measure might involve up to eight individuals per year who will be sentenced to our prisons for life. This is a bill which is late in coming but its time has come. There will be more people in prison as a result of this bill, but they ought to be there.

{Tape: 1; Side: B; Approx. Counter: 8.5}

Proponents' Testimony:

Jerry Williams, Montana Police Protection Association, announced that they stand in support of SB 66.

Tom Winsor, Montana Shooting Sports Association, announced that they support SB 66 and that the Western Montana Fish & Game Assoc., the Gun Owners of America and Assistance Committee for the Right to Keep and Bear Arms also join in this testimony. In Montana in 1992, a murder was committed every 15 days and 5 hours. A woman was raped every one day and 17 hours. Robbery was committed every one day and 15 hours. Statistics show that 5% of those on probation for murder are arrested for another murder within three years. Twenty percent are rearrested for some other violent crime within three years. The average career criminal commits 187 to 287 crimes per year. This average crime cost per year is \$2300. The average per year cost of career criminals is as much as \$430,000. The national average to keep that person in prison is \$25,000 per year. The organizations he is here representing today represent approximately 30,000 Montanans. He presented written testimony, **EXHIBIT 9.**

John Huth, Department of Corrections and Human Services, stated he was here neither as a proponent or opponent of SB 66 but simply to provide information. **EXHIBIT 10**

A. M. Budwell, Montana Weapons Collectors Society, stated they support SB 66. They are opposing a bill which would put in a three strikes and you are out provision. They like SB 66 much better.

Kathy McGowan, Montana Sheriffs and Peace Officers Association, expressed their support of SB 66.

Informational Testimony:

Ted Clark, Research Manager for the Department of Corrections and Human Services, provided written testimony **EXHIBIT 11.**

Opponents' Testimony:

Scott Crichton, Executive Director of the American Civil Liberties Union of Montana, opposes SB 66. Mr. Crichton presented his written testimony **EXHIBIT 12.**

Russell Hill, Executive Director of the Montana Trial Lawyers Association, announced that MTLA opposes SB 66. The issue is how we deal with crime. The bill goes beyond violent crimes. MTLA feels this bill, under sexual intercourse without consent, would include statutory rape. It would also include sexual relationships where there was a misunderstanding about consent. Under arson, the bill includes anyone who knowingly starts a fire that eventually endangers human lives, including firefighters. Kidnapping, under the law, is restraining somebody with unlawful

authority to do so. Merchants who suspect shoplifters and wish to restrain a shoplifter are constantly afraid of this law. Under robbery, most robberies are theft plus a violent component of theft. The statute does not define robbery as including a violent component. Robbery could be in the course of theft. This bill reduces dramatically the discretion of the courts. Law enforcement personnel are given some discretion in terms of prosecuting crimes. Juries will understand that if they convict on a second defense it will require a lifetime sentence and they will not convict.

Questions From Committee Members and Responses:

SENATOR RIC HOLDEN, questioned the procedure for medical care in referring to page 1, line 28(c), "may not for any reason be transferred for any length of time to another type of institution, facility, or program." **SENATOR LYNCH** answered that medical care is provided at the facility, however, prisoners are not precluded from going to a hospital temporarily as long as they are still under the direction of the prison. **SENATOR HOLDEN** asked about need for more prisons. **SENATOR LYNCH** stated that down the road prisons would be needed.

SENATOR STEVE DOHERTY questioned, in the review of sentences from 1990 to 1994, how many were persistent felony offenders. **Mr. Clark** stated he did not look at persistent felony offenders specifically. **SENATOR DOHERTY** questioned if any costs were taken into account for geriatric care. Is there a difference in housing a 25 year old at \$40 a day who is healthy compared to someone who is much older and unhealthy. **Mr. Clark** stated they have one year of data from Blue Cross and in that data inmates who were older than 50 had slightly more than twice as many medical encounters as those under 50 and that the costs of those encounters was about half again as much as for those under 50. **SENATOR DOHERTY** further questioned whether these projections were taken into account in the projections given earlier. **Mr. Huth** stated they did include medical costs in their projection. In the fiscal note asked for they did provide a brief area to explain that there would be considerable medical costs. **SENATOR DOHERTY**, in referring to the robbery statute, questioned whether two strikes would apply when in the process of stealing cattle a fire was started and that person was convicted of felony theft for both robbery and arson. **SENATOR LYNCH** said he is relying on the jury and prosecutors not to count that as two strikes. However, if the wording needs to be cleared up, he defers to the committee to do so.

SENATOR SHARON ESTRADA asked **Mr. Crichton** if his concerns were the costs and humanitarian reasons. **Mr. Crichton** answered that when three strikes and you are out was being discussed he talked to Rick Day from the Department and was told that they already have the capacity to see that the second serious offender will spend a very, very long time in jail through the habitual offender, sentence enhancement and minimum mandatory rules that

are already in place. The ACLU is concerned about the conditions of people in confinement. The state has a responsibility when people are in its charge that at least minimum constitutional standards are upheld.

SENATOR MIKE HALLIGAN stated that the geriatric considerations are very real. He questioned whether there could be some modifications to Section 1, line 28, wherein it states that the prisoner may not be transferred. **SENATOR LYNCH** stated that he had no problems with modifications if that could make it a better bill. He does not want the serious offenders sent to a half way house in his hometown.

SENATOR BARTLETT, in referring to the need to build an additional high security unit which would house 80 inmates, asked what number the current high security unit of the prison houses. **Mr. Huth** said he did not have that information, however, the current high security unit is almost at maximum. **SENATOR BARTLETT** asked **SENATOR LYNCH** if he looked at the list of crimes which is to be included and if he agreed that each should be listed and included. **SENATOR LYNCH** stated the only one he took a second look at was robbery. He was thinking of robbery and burglary as the same thing, however, they are not. **SENATOR BARTLETT** asked if he looked at felonies that are listed in our Codes that are not included in this bill and if there are any that he would add. **SENATOR LYNCH** replied that he would not add any additional felonies to the bill. **SENATOR BARTLETT** asked whether a fiscal note had been requested on this bill. **SENATOR LYNCH** said it had. **SENATOR BARTLETT** remarked that during executive session on this bill they need to turn their attention to item (c) on line 28 which talks about not transferring for any length of time.

CHAIRMAN CRIPPEN asked for a definition of the state prison. **Mr. Clark** stated that the state prison is the Montana State Prison. For purposes of figuring institutional population counts they include prerelease centers and the intensive supervision programs around the state. The prison remains the prison. Prerelease centers house people who are considered prison inmates for statistical purposes, but they do not consider themselves part of that institution. **SENATOR CRIPPEN** remarked that the regional correction facilities, such as jails, would not then be considered the prison. **Mr. Clark** stated that he is not entirely certain how regional correction facilities would fit into this. **SENATOR CRIPPEN** stated that of the 38 inmates referred to earlier, 28 of them are in the Montana State Prison and the rest are somewhere else. Were those costs included in the report? **Mr. Clark** stated that the costs given were for all 38 inmates being incarcerated at the Montana State Prison. **SENATOR CRIPPEN** questioned how many prisoners at the Montana State Prison are serving under a third offense. **Mr. Clark** stated that a year ago he looked at the current prison population looking for people who had been convicted of three consecutive separate violent crimes. In the January 1994 population of 1500, there were three or four inmates who were convicted of three separate independent violent

crimes. If you looked at people convicted twice separately of any violent crime, not limited to the offenses in SB 66, there were 20 or 30.

{Tape: 2; Side: A}

Closing by Sponsor:

The person SB 66 addresses has to be convicted by a jury of their peers a second time. This bill wants to protect our children and our grandchildren. Law enforcement endorses the bill.

EXECUTIVE ACTION ON SB 36

Discussion: SENATOR GROSFIELD referenced the handout from SRS listing that four presumptions that are in the law. EXHIBIT 13 Number 4 would become the first priority. The other presumptions are (3) the child's mother and father have acknowledged the father's paternity, (2) the man holds himself out to be the child's natural father and (1) is marriage. The question before the committee is whether they are satisfied with having blood testing showing a 95% or higher statistical probability being the first priority and letting the judge decide amongst the other three or does the committee want to set priorities for the other three. SENATOR BISHOP stated that blood testing is the surest way to determine paternity.

Motion: SENATOR BARTLETT moved to strike the language that starts on page 1, line 29, through line 2, on page 2, all of (5). That would strike the provision that would give a presumption to a blood test. Also on page 8, strike line 22 through 25.
EXHIBIT 14

Discussion: SENATOR HOLDEN felt that the committee would be "gutting" the bill. SENATOR BARTLETT felt that the real part of this bill is in other changes to the existing statutes. SENATOR BISHOP asked Mary Ann Wellbank if the amended bill would put them in compliance with the federal act. Ms. Wellbank said they would still be in compliance. This language does say that blood test presumption has the higher rank of all of the presumptions. To delete that would not harm them in any way. SENATOR BARTLETT stated that in reading the information from the Child Support Enforcement Division and the variety of scenarios that could occur it is much more important to let the triers determine on the facts of the case and what they consider most compelling in each individual case.

Vote: The motion to amend SB 36 CARRIED on oral vote with SENATORS GROSFIELD, HALLIGAN, HOLDEN and NELSON voting "NO".

Motion/Vote: SENATOR BISHOP moved SB 36 DO PASS AS AMENDED. The motion passed unanimously on oral vote.

DATE _____

1-13-95

SEN:1995
wp.rollcall.man

CRIMESTRIKE

A Division of the National Rifle Association

NRA Institute for Legislative Action
11250 Waples Mill Road
Fairfax, VA 22030
(703) 267-1160
(703) 267-3992 FAX

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 9

DATE 1/13/95

FILE NO. SB 66

MEMORANDUM IN SUPPORT

TO: The Honorable Bruce Crippen, Chair, Senate Judiciary Committee
The Honorable Members of the Senate Judiciary Committee

DATE: January 13, 1995

SUBJECT: Senate Bill 66, A Bill for an act entitled :
"An Act Providing That A Person Convicted Of Two Major
Violent Offenses Must Be Sentenced To Life In A State Prison
Unless the Death Penalty Is Applicable And Imposed..."

Violent criminals who willfully violate the law and prey on the public must be punished. And those who continue to commit violent crimes, even after a felony conviction, should not be given the opportunity to harm innocent citizens again.

It is with great hopes for its success in Montana that NRA CrimeStrike and the NRA members announce our support for Senate Bill 66, a bill commonly referred to as "Two Strikes, You're Out." We applaud the sponsors for addressing the serious issue of crime and punishment, and urge the Judiciary Committee to favorably report this bill.

The issue of crime has captured the national attention, and rightly so. Every 22 minutes a murder is committed; a rape every five minutes, and a robbery every 47 seconds.

Even Montana is not immune. A violent crime is committed in Montana every 6 hours- and a woman is raped every day and a half. Passage of "Two Strikes, You're Out" will help to alleviate the effects of crime on the citizens of Montana by locking up incorrigible criminals for life.

Repeat offenders are a serious threat to public safety. According to the National Center for Policy Analysis, the average criminal commits 187-287 crimes a year. With the passage of SB 66, the threat to the public is substantially reduced by taking these repeat offenders off the street.

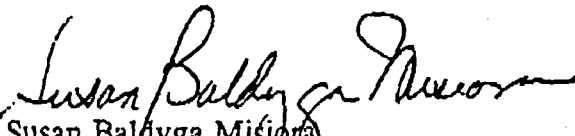
Memorandum in Support
SB 66
Page Two

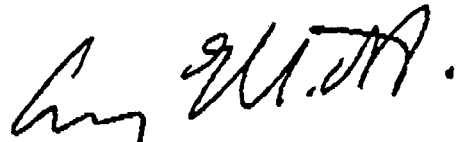
Though a fiscal commitment must be made to put a criminal in prison for life, in the long run, it will save society money. The National Center For Policy Analysis study reports that it costs taxpayers about \$25,000 a year to keep someone in prison. If that criminal is out on the street, committing the 187-287 crimes referenced above, the cost to society is approximately \$2,300 per crime. Added together, one career criminal could cost Montana \$430,000 annually.

Another compelling reason for the passage of SB 66 is that increased incarceration for violent crime works. As the attached chart demonstrates, as Montana has jailed more criminals, the crime rate has decreased. With "Two Strikes" assuring that repeat offenders remain behind bars, the crime rate will continue to decrease.

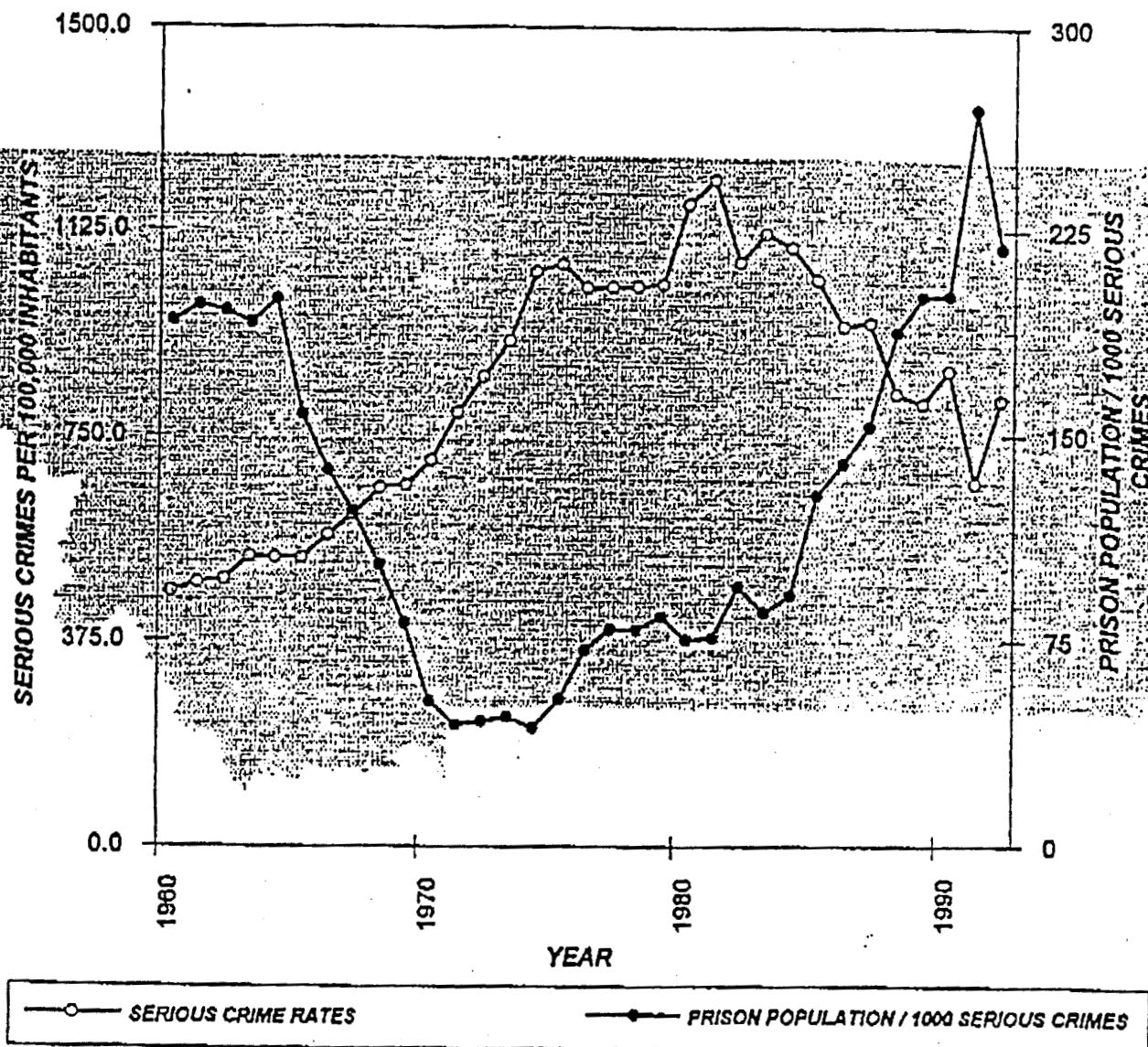
Contrary to popular opinion, making the decision to put repeat violent offenders in jail for life is not an easy decision. It requires the political will to stand up against the nay-sayers who preach, despite the overwhelming evidence to the contrary, that increased jail time is not the answer. The introduction, and subsequent passage, of SB 66 proves that Montana has that will. Again, we respectfully urge a favorable report.

Respectfully submitted,


Susan Baldyga Misiora
Manager, CrimeStrike State Legislative Affairs


Amy Elliott
Montana State Liaison

SERIOUS CRIME RATES VS. PRISON POPULATION PER 1000 SERIOUS CRIMES (1960 - 1992): MONTANA



Serious Crimes include murder, rape, robbery, assault, and burglary.

Compiled from Department of Justice Data by CrimeStrike.

1992 Crime Clock: Montana

Crime	Crimes	Days	Hours	Minutes	Seconds
Crime Index	37,872	0	0	13	53
Violent Crime	1,400	0	6	15	26
Property Crime	36,472	0	0	14	25
Murder	24	15	5	0	0
Rape	210	1	17	42	51
Robbery	222	1	15	27	34
Aggravated Assault	944	0	9	16	47
Burglary	5,306	0	1	39	3
Larceny-Theft	29,243	0	0	17	58
Motor Vehicle Theft	1,923	0	4	33	19

SB0066 TESTIMONY
DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES
13 JANUARY 1995

The Department of Corrections and Human Services has looked at data that identifies Prison admissions who would have received life in prison without parole under the provisions of SB66 for the years FY90-FY94. There is an annual average of eight admissions to MSP for offenders with two separate convictions for crimes defined in SB66.

SB66 would have no fiscal impact in the 1996-97 biennium to DCHS. The people convicted of second offenses would be incarcerated regardless of SB66. The fiscal impact of this bill is in the long-term. The increase in population of 8 inmates per year would require an additional high security housing unit every 10-15 years at an estimated cost of \$4-\$5 million based on FY94 dollars. To staff a close custody unit of this nature would require an additional 26.0 FTE and cost \$1,184,936 to operate based on FY94 dollars. (80 X \$40.58 X 365 days)*

* 80 inmates
\$40.58 FY94 General Fund cost per ADP per day

DATA CONCERNING FY1990 - FY1994 PRISON ADMISSIONS WHO WOULD HAVE
RECEIVED LIFE SENTENCES WITHOUT PAROLE UNDER SB66.

DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES
13 JANUARY 1995

1. An unduplicated total of 38 inmates was admitted to prison for second conviction of crimes addressed by SB66 in Fiscal Years 1990 through 1994.
2. Today, those admissions are in the following status:
 - a) MSP - 28, 13 in high custody and 15 in medium-minimum custody;
 - b) Pre-release - 1;
 - c) SRCTC - 1;
 - d) Montana state Hospital - 1;
 - e) Interstate Compact - 1;
 - f) Parole - 1;
 - g) Probation - 1; and,
 - h) Release from supervision - 4 (2 from parole, 2 from discharge balance suspended).
3. Sentences received by these admissions had the following characteristics:
 - a) Maximum - 100 years;
 - b) Minimum - 5 years;
 - c) Average of all sentences - 30.0 years; and,
 - d) Average sentence with maximum and minimum deleted each year - 26.1 years.
4. Two of the 38 are ineligible for parole.
5. Crimes committed by these admissions and identified in SB66 were:
 - a) Robbery - robbery. 13 admissions, 34.2% of total;
 - b) Rape - rape. 11 admissions, 28.9% of total;
 - c) Robbery - arson. 4 admissions, 10.5% of total;
 - d) Robbery - rape. 3 admissions, 7.9% of total;
 - e) Kidnapping - rape. 2 admissions, 5.3% of total;
 - f) Homicide - homicide. 1 admission, 2.6% of total;
 - g) Kidnapping - kidnapping. 1 admission, 2.6% of total;
 - h) Arson - arson. 1 admission, 2.6% of total;
 - i) Homicide - rape. 1 admission, 2.6% of total; and,
 - j) Robbery - kidnapping. 1 admission, 2.6% of total.
6. Those admissions with the shortest sentences were sentenced in accordance with plea bargains in all but one instance. Parole ineligibility was assigned for reasons of lengthy and violent criminal history. The admission who received a 100 year sentence had twice committed a homicide.

ACLU OF MONTANA

AMERICAN CIVIL LIBERTIES UNION

EXHIBIT NO. 10
DATE 1/13/95
FILE NO. SB 66

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763
SB 66 January 13, 1995

Mr. Chairman, Members of the Committee:

For the record, my name is Scott Crichton, Executive Director of and lobbyist for the American Civil Liberties Union of Montana. I am here today to express opposition to SB 66.

I know the temptation here today is to think that you are doing something bold and new to combat crime. However, I think if you take a closer look at the reality of the situation, you already effectively have two strikes with enhanced penalties for habitual offender and recidivist provisions which are in place in Montana. In addition, over recent years, more and more provisions have been made for mandatory sentencing requirements.

When Governor Racicot spoke to us about the "State of the State", he included a reference to the prison system and the people we incarcerate. He said, "We are confining prisoners at a record pace in Montana. We now have close to 1,300 prisoners in a prison built for 850. Montana's aggressive criminal justice system and law enforcement community have produced one of the lowest crime rates in the nation." The Governor reminded us that spending for prisoners was not discretionary, that a key proposal will be a Truth-in-Sentencing bill, and that he's proposing a Sentencing Commission allowing for public participation in designing voluntary sentencing guidelines for judges to use."

I think we need to take a long hard look at the practical effect of passing this "two strikes and you're out" legislation, and what additional pressures and costs will be placed on our already bulging prison population. Before you rush headlong into passing this bill, I ask you to consider the effects of "aging out" and, at the very least, the costs associated with establishing a geriatric ward at Montana State Prison.

According to FBI data, violent crime arrests rise rapidly in the teens, peak at 18 and taper off through the 20's. By age 35 most adults "mature out" of crime and actually commit crimes at a rate lower than 13 year olds. To continue with the sports metaphor the sponsor has chosen, this makes violent crime very much a "young mans game".

But this is no game, no sporting event. By adopting mandatory life without parole statutes as proposed here, you will be creating a real legacy for future generations. The effects may not be felt significantly this biennium, or the next, or even over the next decade. But gradually and then dramatically, the costs for making such a decision today will be the burden of your children, and of your children's children for all of their tomorrows.

Any of you who have watched a parent or grandparent decline with age, should be able to grasp that the "average cost" of incarcerating an inmate will substantially rise as the inmate ages. In time, our state prison will need to have its own geriatric ward. The associated medical expenses of aging convicts who can never be released will be substantially more burdensome than it was when they were young. For like it or not, the state is responsible for medical costs. I think you need to scrutinize any fiscal note, recognizing the department projections vary from session to session.

The state acknowledged as much when it entered into an agreement with the ACLU that was finalized last November, promising in federal court to among other things 1) increase physician and nursing coverage to meet the prison population needs; 2) employ a medical director to develop a comprehensive medical care system; 3) conduct tuberculosis screening and follow up, following the Center for Disease Control's guidelines; 4) eliminate the dental list backlog within one year; 5) retain a part time psychiatrist to develop a comprehensive mental health services plan.

Adding insult to injury, no sooner did the Department and ACLU attorneys have their settlement approved by the court, than the United States Department of Justice filed suit saying this agreement did not go far enough to protect the rights of these inmates.

I want you to consider this. Experts tell us that age is the most powerful crime reducer. To life sentence people who will almost certainly "age out" of their criminality makes no sense.

Jerry Johnson, the president of the American Correctional Association says, "The idea of sentencing every three-time offender in their mid-twenties to life without parole is ludicrous. The last 40 years of the sentence buy almost nothing for public safety, but have an incredible cost to the taxpayer."

The only real beneficiary of this proposal will be the prison construction industry, which is already a growth industry thanks to mandatory minimum sentences already in effect. California, for an example, which recently passed a three strikes proposal, and which currently has more people in prison than we have in our largest city, Billings, will add an estimated 58,518 inmates to the projected base of 165,000 by the year 1998- more than a 50% increase. By the year 2028, it will add 275,000 more at a cost of \$5.7 billion. (Those figures according to the California Department of Corrections.)

I know Montanans don't want to be like Californians. But if we enact into law proposals like that which we are discussing, we will follow in their foot steps. the total dollars we be smaller numbers no doubt, but with similar percentages of limited tax dollars going towards unnecessary costs committed to by this legislature.

Beyond aging out" and the costs associated with that concept, there are two other notions worthy of some consideration- the issues of "non-deterrence" and "increased violence".

Most violent crimes are not pre-meditated. They are committed in anger, in the heat of passion or under the influence of alcohol. This bill is not going to stop those who are acting impulsively, without the fore thought of the likely consequences of their action. In addition, repeat offenders do not consider the penalties they face before acting because they don't anticipate being caught.

Some law enforcement professionals oppose legislation like this out of fear such laws would spur a dramatic increase in violence against police, corrections officers and the public. A criminal facing the prospect of a mandatory life sentence will be far more likely to resist arrest, to kill witnesses or attempt a prison escape. Dave Paul, a corrections officer from Milwaukie, Oregon, wrote in a newspaper article: "Imagine a law enforcement officer trying to arrest a twice-convicted felon who has nothing to lose by using any means necessary to escape. Expect assaults on police and corrections officers to rise precipitously." (Portland, Oregon, 3/94). Ironically, such laws may cause more, not less, loss of life.

To close, crime is too complex an issue to try to resolve by offering simplistic solutions. In the short term, anyone who says "lets get tough on crime" may find it easier to get re-elected. However, I direct you to the provisions of MCA 46-18-101, which requires, in addition to punishment, that rehabilitation be addressed. The statute provides in part:

(2) the correctional policy of the State of Montana is protect society by preventing crime through punishment and rehabilitation of the convicted... To achieve this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever probable cause exists and that punishment of the convicted is certain, timely, and consistent. Furthermore, it is the state's policy that persons convicted of a crime be dealt with in accordance with their individual characteristics, circumstances, needs and potentialities.

Thye tough job is to do real problem solving. The problem of crime can only be addressed through long-term initiatives which require considerations of many factors-- individuals, family and community. The current narrow and highly politicized debate only intensifies the public's fears and leads to disappointment.

In my opinion, lawmakers would make better use of taxpayers' money today, and of taxpayers for generations to come, by emphasising front-end, crime prevention approaches rather than back-end reactive tactics like you are considering today.

I urge you to vote no on SB 66.

DATE 1-13-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 604

SB 66

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Cathy Lindall	Crim Central	64	✓	
Ted Clack	DCHS	66		
John Huth	AHS	66		
W. James Kembel	city of Billings	64	✓	
MARY ELLERD	MJPOA	64		
Bob Gilbert	MT. MAGISTRATES ASSOC.	64	✓	
Beth Baker	Dept of Justice	SB64	✓	
Thomas S. Winsor	Mont. Shooting Sports et al.	SB 66		
Len Taylor	ADAW - DCHS	SB 64	✓	
Jim OBERHOFFEN	MCOP	64	✓	
Kathy McGowan	MSPOA	64, 66	✓	
Robert Runkel	OPI	64	✓	
A. M. (Bud) Elwell	NWAC/WCSM	SB 66	✓	
Russell B Hill	MTLA	66		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1-13-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 64

SB 66

< ■ > PLEASE PRINT < ■ >

Check

Name	Representing	Bill No.	Support
Jerry Williams	Maibara Police Protective Hsgt	64	✓
Jerry Williams	" " " "	66	✓
GENE KISER	MBCC	64	✓
STEVE YEAKEL	MT COUNCIL FOR MATERNAL & CHILD HEALTH	64	✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

where a lot of them were during the hearing on this bill.

Vote: The MOTION CARRIED on roll call vote with SENATORS DOHERTY, HALLIGAN, and NELSON voting "NO".

EXECUTIVE ACTION ON SB 66

Discussion: Valencia Lane stated the main amendment is amendment 13 which makes some crimes three strikes instead of two strikes. Subsection 1 (a) has the two strike crimes which are deliberate homicide, aggravated kidnapping or sexual intercourse without consent. The new (b), which is inserted, lists the three strike crimes. She suggested the committee pay attention to the first few lines of new (b). The two strike crimes are two strikes only for those crimes. The three strike crimes are three strikes for any combination of the two or three strike crimes. If you take one two-strike crime and one three-strike crime, you have returned to the way the bill was drafted.

SENATOR DOHERTY stated he supports the bill, however, perhaps there needs to be a warning, "passage of this bill may increase your taxes."

SENATOR GROSFIELD commented that the amendments as drafted do exactly what the committee intended.

EXECUTIVE ACTION ON SB 167

Discussion: Valencia Lane explained that Beth Baker asked for an amendment. Starting on page 2, line 29, she inserted a new subsection (h) that reads, "Nothing in this act may be construed to create a private cause of action." She was concerned that the state could be sued by private individuals if they didn't take actions to avoid federal mandates.

Informational Testimony: EXHIBIT 6 was provided to the committee following the meeting for their information.

Closing by Sponsor:

SEN. JACOBSON reviewed the 1993 information which was presented and the statistics from other states using the program which indicated positive results. She said the bill made the proposed changes and the funding was in HB 2.

HEARING ON SB 353

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, said the bill would allow the judge to appoint a special master. It is a local discretionary matter in both civil and criminal proceedings. He discussed the various sections of the bill.

Proponents' Testimony:

Judge John Larson, Fourth Judicial District, rose in support of SB 353 as a bill which would simplify and provide flexibility in some cases where a district judge is not needed. He said it was based on the federal court model and has been tried in the federal judiciary for 200 years. He said that some divorce cases are referred to counselors regarding visitation and to accountants for calculating child support issues. He said that was an effective tool in diffusing the cases and getting them resolved earlier and keeping the kids out of the disputes.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

None

Closing by Sponsor:

SEN. HALLIGAN closed. REP. DUANE GRIMES agreed to carry SB 353.

HEARING ON SB 66

Opening Statement by Sponsor:

SEN. J.D. LYNCH, SD 19, said SB 66 came about because of current situations where criminals were being seen in public and dangerous criminals were being released. He had seen that the state of Georgia had put the most violent crimes on an initiative for two strikes and they were out. In his opinion the whole

concept of rehabilitation had failed miserably if someone commits the same offense a second time and he asked why they would want to give a third opportunity to rape, murder, or kidnap our citizens. He said, "Two strikes and you are in and you are in for good." The Senate committee lightened the original bill by removing some of the offenses from the two strikes concept and making them three strikes offenses.

He said they could cut the fiscal note in half in terms of the long-term effect. In about 10-20 years, another 80-bed unit would have to be built to keep the incorrigible criminals in prison. He said there would be no short-term effects. One opponent suggested that passage of the bill would commit future generations to paying for it. His answer was that he would want his children and grandchildren alive to pay for it and did not think it was too great an investment. He challenged the committee to check with their constituents to find that they too would be in favor of locking up the predators for good.

Proponents' Testimony:

Stan Frasier spoke on behalf of Gary Marbut and the Shooting Sports Association, Gun Owners of America, Citizens Committee for the Right to Keep and Bear Arms, Western Montana Fish and Game Association, and Big Sky Practical Shooting Club, in favor of SB 66. EXHIBIT 7

CHAIRMAN CLARK relinquished the chair to VICE CHAIR SHIELL ANDERSON.

Sharon Bakerson, Majority Against Child Molestation (MACeM), said that child molestation was rape. She said that how a child interacts with others is greatly influence by how the case is handled once he or she has had the courage to expose the molester. If they see the perpetrator punished and kept in prison, the victim has the chance to heal. When the offender is slapped on the wrist and set free, the victim cannot trust the judicial system or anyone and cannot heal. She said it is time to take the shame from the victim and help them become well again by placing the blame on the offender where it belongs. She asked that the committee amend the bill on number 27 to include child molestation and/or sexual assault on a minor.

{Tape: 2; Side: A}

REP. LIZ SMITH, HD 56, rose in support of SB 66. She carried a message from a constituent who is fearing for her life because of a potential release of a perpetrator.

REP. DANIEL MC GEE, HD 21, stood in strong support of SB 66. He reiterated that the legislators are policy makers, not just fiscal analysts. This is the kind of policy they need to make for future generations, he said.

Erinne Haskett, Founder of MACeM, urged the committee to amend SB 66 to include child molesters and/or persons who commit felony sexual assault on a minor. She testified to a current situation which hinged on the passage of this bill. Laws should be passed to favor the victim, she implied, and urged the committee's favorable action.

Informational Testimony:

Sharon Hoff, Montana Catholic Conference, made it clear that she was standing as neither a proponent nor an opponent, but said that the Catholic Church had always been pro-life. She said that they understood that people are sick of crime, but they had to look at putting money into prisons at the expense of other social programs and that they might be doing it at the expense of crime prevention. She challenged the committee to look at ways to address the issues up front. She did not believe that prevention programs had ever been fully funded. She said that California has a three-strikes bill and were building four prisons per year. She said they were looking at the California industrial complex at the expense of other programs. Their education programs have been reduced while the prison system is being expanded. The Georgia prisons are already full even though the law has not been in place for long. In California, the first person arrested under the three strikes law was a purse snatcher and the victim did not press charges because she felt the crime did not warrant life-time imprisonment. She said these were cautions which needed to be looked at.

Proponents' Testimony:

Nina Pullman, MACeM, supported the bill wholeheartedly. She said that if people can't get it right after the first or second time, they should not be given any more chances.

Opponents' Testimony:

Scott Crichton, Executive Director, ACLU, prefaced his remarks by stating that he did not want to denigrate the testimony of victims before the committee. He presented the civil liberties concerns about the bill. He said a closer look at the reality of the situation was that there already was effectively a two-strikes program with enhanced penalties for habitual offenders and recidivist provisions and there already were enacted mandatory sentencing requirements.

He recalled the Governor's remarks about Montana's aggressive criminal justice system and law enforcement community having produced one of the lowest crime rates in the nation. Other remarks were quoted from the Governor and discussed the fiscal impact of this bill which included aging out and the costs of establishing a geriatric ward at the prison. He said that violent crime arrests rise rapidly in the teens, peak at 18 and taper off by the 20's. By age 35, most adults mature out of

violent crime and commit crimes at a lower rate than teenagers, according to FBI statistics. Violent crime is a young man's game. By adopting mandatory life without parole statutes, they would be creating a legacy for future generations the effects which would not be felt this biennium. Perhaps the effects would not be felt during this decade, he remarked. He said that gradually the effect will be felt by future generations. He said they needed to scrutinize any fiscal note by recognizing that the costs in the future will be greater, there will be a need of medical care for the prisoners who become elderly and the variety in department projections of costs. He said the only real beneficiary was the prison construction industry. He repeated that age is the most powerful crime reducer and to life sentence people who would most likely age out of their criminality made no sense to them.

He also discussed the issues of non-deterrents and increased violence. He said most violent crimes are not premeditated but done in the heat of anger and passion or under the influence of alcohol or drugs. He said that this bill would not stop those impulsively committed crimes. He said that repeat offenders do not consider penalties because they really do not anticipate being caught. Some law enforcement officials fear such legislation because they believe it will spur violent crimes against police and correctional officers as well as bystanders. A criminal facing life time sentences may be more likely to resist arrest and to kill witnesses or to attempt prison escape or to be non-compliant while incarcerated. They would have nothing to lose. He felt it would tie the hands of judges who weigh the differences between circumstances before imposing sentences. He said they should request a fiscal note on how it would impact the judicial system. Plea bargaining would be eliminated as an option and holding complete trials would cost a great deal of money.

{Tape: 2; Side: A; Approx. Counter: 25.3}

CHAIRMAN CLARK resumed the chair.

Craig Frazier, representing Montana State Prison inmates, said he was an ex-convict who was concerned with the addition of crimes which would be defined as violent. He said that those crimes which involve a weapon carry a sentence enhancement and at the judge's discretion now can be termed without parole. He said that public safety was at stake because the talk among the prisoners is that they would "go out with a blaze of glory." He said it would leave officials without means of negotiation. He urged the committee to look at truth in sentencing and quality of sentencing and the adoption of federal sentencing guidelines.

REP. JOAN HURDLE, HD 13, opposed the bill. She felt that those who were concerned about government growth needed to be aware that rapidly expanding imprisonment programs are the largest

government programs today. She suggested looking at the California penal system which is third in size next to the United States as a whole and China. She quoted statistics showing that super-incarceration has a negligible influence on crime and also talked about the size and impact of the prison industry. Further, she said that in California education was being replaced "brick by brick" for prisons.

She suggested that the prison population was made up of first-time nonviolent drug offenders and the mentally ill who may not belong there at all but belong in a treatment program. She said that imprisonment can train people for crime.

Jeff Renz, Attorney, said he had had a criminal practice as an attorney. He tended to specialize in child molestation cases. He said that 50% of those who came to his office were factually innocent of the accusations made against them. They had been accused because of certain actions to divorce cases or someone was afraid to identify the real abuser. He was convinced that two clients who were serving long term imprisonment were innocent. He said the committee needed to keep in mind that innocent people are convicted. He told of a case where a person who committed a robbery executed the persons who had stated that they remembered what he looked like as he was leaving the scene of the robbery because he knew he would face a life sentence. He agreed that this would result in the increase in the deaths among witnesses.

He said the tools which are being properly used now at the discretion of the judges in sentencing were effective and could not be set aside to free people presently incarcerated.

{Tape: 2; Side: A; Approx. Counter: 39.8}

Questions From Committee Members and Responses:

REP. BOHARSKI asked Mr. Renz about the case of the innocent man in prison who he cannot get released. He asked how he knew he was innocent and why he couldn't get the prisoner out of prison.

Mr. Renz said he had referred to two men who had been convicted of sexual abuse of children. There are certain kinds of cases where the men fit all the indications that make them highly suspect. The one person was accused of sexually assaulting his niece. The niece had made similar accusations on a number of occasions against other people. The only evidence against this man was her testimony, there was no physical evidence and her testimony of unfounded accusations against others was excluded from trial. He can't get him out because he cannot retry the case and because the supreme court had ruled that that evidence was properly excluded.

REP. BOHARSKI stated that while Mr. Renz did not believe the man to be guilty, the court system had determined that he was legitimately convicted.

Mr. Renz contend the courts are not infallible and that the man is innocent.

REP. BILL TASH asked the sponsor if he had any feel for the value of this type of legislation as a deterrent.

SEN. LYNCH said he would not sponsor the bill if he did not think that it would act as a deterrent. He said they were talking about someone who had actually been convicted by a jury previously on the same crime.

REP. TASH asked if the information which was given about the increase of incarceration in other states was factored in the current factor on a per capita basis.

SEN. LYNCH said that California's law is three felony convictions. Felony crimes can be bad checks over \$500. One publicized case was about a man whose third crime was stealing a piece of pizza from a child and was convicted under the three strikes law. He said he was not going that far but was talking about those who were actually hurting people.

REP. KOTTEL asked why there were no representatives in the hearing from the Departments of Justice and Corrections.

SEN. LYNCH said they were in the Senate. He said they had provided the information behind the amendments made in the Senate. He said the police officers association had also endorsed the bill.

REP. KOTTEL noted that they had included sexual intercourse without consent, 503, but did not include 502 and asked for a technical interpretation of the difference between sexual assault and sexual intercourse.

Mr. Renz answered, "Penetration." [of the vaginal area]

REP. KOTTEL asked if in his mind it was any less of a crime when a woman is sodomized with a foreign object or a woman is forced to.....is that sexual intercourse when a woman is forced to engage in oral sexual conduct....is that sexual intercourse, penetration of any.....

Mr. Renz answered that was right.

REP. KOTTEL asked for examples of sexual assault.

Mr. Renz answered that it was essentially offensive touching of the vaginal area instead of penetration, clothed or unclothed.

REP. KOTTEL said 503 talked about "without consent" and asked if this would be commonly known as date rape or acquaintance rape.

Mr. Renz said under the statute, consent had to be given knowingly and freely. When someone who was intoxicated or asleep and unable to give consent, that would be termed sexual intercourse without consent. If someone were incapacitated because of mental disability, therefore deemed unable to give consent, that would also be termed sexual intercourse without consent.

REP. KOTTEL said sexual intercourse without consent seemed to cover a wide variety of sexual activity.

Mr. Renz explained that sexual intercourse without consent is not measured by the degree of interaction. If the defendant beats a woman half to death and rapes her, that indicates a certain state of mind. If the defendant decided no is not a no, that indicates a different state of mind. He did not distinguish between the two in terms of minimal level of the crime.

REP. KOTTEL asked to clarify that they would both be sexual intercourse without consent and he affirmed that.

REP. KOTTEL asked if under 45-5-503(3)(a), MCA, the victim is less than 16 years old and the defendant is three years or more older that was what was called statutory rape. He affirmed that.

REP. KOTTEL asked if it was presumed to be without consent if an 18-year-old has sex with a 15-year-old.

Mr. Renz thought it was that under 14 it was considered without consent and for 16 and under with a three year age difference.

REP. KOTTEL asked if all of this type of behavior is included in the two-times-and-you-are-out provision when 45-5-503, MCA, is included.

Mr. Renz said it would qualify.

REP. KOTTEL asked why, if a man or woman violently rapes a child, they are seldom charged under 503 but almost always charged under sexual molestation.

Mr. Renz said he does not make the charging decisions so he did not know what prosecutors were thinking. He guessed that much of the time, the requirement of penetration either wasn't there or the child could not testify credibly.

REP. KOTTEL asked if it seemed inconsistent to him that when there was a charge of sexual molestation where vaginal penetration was clear and the person plead guilty, they would not be included under this section, but in a sexual intercourse without consent to an adult case, they are included under this

section in the two-times-and-you-are-out..... She asked if they were offering more protection to adult men and women than to children.

Mr. Renz said he did not understand the question.

REP. KOTTEL re-asked the question. If a child is vaginally penetrated.....

Mr. Renz said that would be sexual intercourse without consent.

REP. KOTTEL asked if it was not also true that generally they are not charged with 503, but with sexual molestation.

Mr. Renz could not say that was true. He said he was sure there were exceptions where it could have been charged, but because of the age and ability of the child to testify it was not.

REP. KOTTEL asked about aggravated kidnapping and asked if that was like a false imprisonment.

Mr. Renz said that they do distinguish between degrees of kidnapping. Montana's Supreme Court considers kidnapping to be any forcible restraint for any period of time whether a few seconds or a few months.

REP. KOTTEL said it says that it is kidnapping if "he" knowingly or purposefully and without lawful authority restrains another person, etc. It did not say that they would have to use physical [force] or necessarily threatening physical force, and asked if that could be a custodial situation in terms of not returning a child under a custodial divorce order. She wanted to know the parameters of kidnapping.

Mr. Renz said technically that would fit kidnapping, but it probably would be charged as custodial interference.

{Tape: 2; Side: A; Approx. Counter: 56.0}

REP. LINDA MC CULLOCH asked the sponsor to discuss the fiscal impact on the judicial system.

SEN. LYNCH said it was amazing that the same opponents were suggesting that this would have no affect anyway because it was going on right now. He said the judge would have discrimination in sentencing for the first violent offense and the second the bill adjusts as a policy decision in the state. He said there was no opposition from any judges' association.

REP. MC CULLOCH asked if the sponsor was familiar with REP. JORE'S two-strikes-and-you-are-out bill. The sponsor was not. She reviewed it with the sponsor.

REP. MC CULLOCH asked if the sponsor thought the citizens of Montana were willing to pay for the increased costs of this bill.

SEN. LYNCH said the citizens had indicated to him clearly from all over that those types of people ought not to get third, fourth and fifth times to commit those types of crimes.

REP. MC CULLOCH said she had run a survey asking if people were willing to pay for it. She was surprised that they were not overwhelmingly willing to pay for it.

SEN. LYNCH suggested that if the questions were worded in a certain way, the answers would be that people are overwhelmingly unwilling to let them go free.

REP. MC CULLOCH referred to testimony that some of the criminals should be put into other programs such as the boot camp and pre-release centers and asked if he agreed with that.

SEN. LYNCH said he was. He said they will need more prison space regardless of this bill.

REP. MC CULLOCH was concerned because of the recent furor over the Swan River Boot Camp.

SEN. LYNCH said the boot camp philosophy was a good one because it takes first-time offenders and tries to keep them away from hardcore criminals.

{Tape: 2; Side: B}

REP. ANDERSON asked if the sponsor would agree to a coordinating instruction with the arson bill.

SEN. LYNCH said he would.

REP. ANDERSON asked for a discussion of the behavior of those who have life sentence with no parole versus those who don't and if they are more of a problem.

John Huth, Department of Corrections and Human Services, said he did not believe they had data to answer that, but said he would try to secure it.

REP. ANDERSON asked for any evidence at all that they might have.

REP. MC GEE asked if he understood that the sponsor served on the Institutions [Committee].

SEN. LYNCH said he did last time, but not this year.

REP. MC GEE asked if he knew if they took a tax dollar, how much of it went to institutions. The sponsor could not tell him that.

REP. MC GEE cited article 2, section 28 of the Montana Constitution as providing that, "laws for the punishment of crime shall be founded on the principles of prevention and reformation." In addressing the concept of deterrents, he asked Mr. Crichton if he agreed that deterrents are a form of prevention.

Mr. Crichton said he believed they could be.

REP. MC GEE asked if he agreed that by passing this bill that there would be a deterrent effect by having as a policy of the state of Montana that a second-time offender of a major violent crime would in fact be institutionalized for life.

Mr. Crichton did not agree to that. He said he thought that most violent crimes are committed in the heat of the moment when people are not thinking about the consequences of their actions.

REP. MC GEE said that was a very good point and pursued the thought and asked how many repeat offenders of crimes of passion there are.

Mr. Crichton said he could not answer that.

REP. MC GEE asked if he agreed that this bill would address people who are not acting out of passion, but rather out of violence and purpose and in a predatory manner.

Mr. Crichton answered that the crimes listed in the bill are reprehensible, but was certain that he would not say that someone could not be either reformed or rendered harmless at some point and be capable of being re-introduced to society. He pointed to the maturing process in prison as a factor in that possible reformation. He objected to keeping the youthful perpetrators in prison for life when they probably would not be driven by the same instincts and desires after they had matured.

REP. MC GEE said that though there is an obligation under article 2, section 28 for reformation, there is also a responsibility to the people who are law abiding, decent citizens. He asked Mr. Crichton if he really felt that people who had committed violent crimes (such as a person in previous testimony) who vowed to recommit those acts upon release could be rehabilitated in any fashion, ever.

Mr. Crichton said that in that individual instance he did not know the person. He said there are some people who will never learn and some who will be released and will re-offend.

REP. KOTTEL asked if without objection from the committee she could question persons from departments of justice and corrections. There was no objection and she asked John Connor, Department of Justice, to state what the good parts and the

concerns of the department with this bill. She asked if he had testified during the Senate's hearing.

Mr. Connor said he did not testify and explained that he does not appear on behalf of the Montana County Attorneys' Association on bills other than those in which they had a direct involvement in their drafting unless they are asked to. He had not received a request to appear, but appeared at executive session at the request of the Senate and worked with them on some amendments. He was willing to answer questions from a personal perspective, but did not feel he could speak for the association since they were not asked to take a position on it.

REP. KOTTEL asked him to speak from the perspective of a prosecutor what some of the pitfalls were as well as the positive sides of the bill.

Mr. Connor said the positive side was that the repeat offender would not be able to re-offend. He said if it were a perfect world, that some would be rehabilitated, but his experience in the criminal justice system suggested that it is a rarity which happens at the personal motivation of the inmate more than anything else. The drawback would be that they would be forced out cases to trial because people would not want to plead guilty if they were looking at a life sentence and would have nothing to lose by going to trial. There would possibly be more charge bargaining, which would result in the record not showing what crime was actually committed. He said that they don't normally take positions on mandatory minimums because they are a matter of policy.

REP. KOTTEL voiced her concern with parity under this bill. Included in the bill was aggravated assault which includes reasonable apprehension of serious bodily injury by the use of a weapon. In domestic abuse cases, often a weapon is used in the act of creating reasonable apprehension. If a "loved-one" threatens another with a gun, it is a \$100 fine, while if done by a stranger it is the three-times-and-you-are-out provision. She asked why there was such a drastic difference in parity.

Mr. Connor said they were not precluded from charging under the other statutes in a domestic abuse case.

REP. KOTTEL asked how often a domestic abuse case had been charged as aggravated assault.

Mr. Connor could not provide statistics. He had seen those kinds of cases and said they depended on the severity of the circumstances and the discretionary exercise of the various county attorneys.

REP. KOTTEL asked if the police association had taken a position on the bill.

Mark Muir, Montana Police Association, answered that they had not.

REP. KOTTEL asked if there was a reason.

Mr. Muir said that the most serious reason was that they felt that it was a moot point with the crowding of the prisons.

REP. KOTTEL asked if the passage of the truth-in-sentencing bill and the elimination of good time would solve many problems in eliminating persons getting out of prison early.

Mr. Muir did not believe that they would solve the problems which [the proponents] were attempting to be addressed by this bill.

REP. SMITH questioned **Mr. Frazier** about his employment and about his incarceration history.

Mr. Frazier explained his history briefly since he did not want to detract from his testimony.

REP. SMITH asked if he believed this bill would have affected him.

Mr. Frazier said that he was pointing out that the laws for violent and nonviolent crimes are already in place. He said it would affect him, but explained how in his case it was already in place.

REP. SMITH asked if it was his first offense and gave reasons why she did not believe the bill would affect him.

Mr. Frazier clarified how it could affect him.

REP. SMITH made the point that they would not deter the ability for someone to be rehabilitated and become productive in society.

Mr. Frazier said that rehabilitation was a good concept, but for him it was choices he had to make, and the prison could take no credit for them. The rehabilitation concept is a myth, he said, because good criminal knowledge is gained by going to prison. He felt he had more problems when he came out than when he went in. Not only is knowledge in criminal law gained, but criminal activity is discussed and learned.

REP. SMITH asked if he had learned anything qualitative while in prison which had assisted him to be motivated to move on.

Mr. Frazier credited his own personal choices. He said prison breeds hate and discontent.

REP. KOTTEL cited 46-18-592, MCA, and said it is effectively a two-strikes-and-you-are-out provision in statute and asked why judges are not currently using it.

Mr. Renz said they were using it.

REP. KOTTEL asked why there is still a perceived problem.

Mr. Renz said he could not answer the question.

{Tape: 2; Side: B; Approx. Counter: 27.8}

Closing by Sponsor:

SEN. LYNCH rebutted the arguments of the opponents. He said they were not talking about a three-strikes-felony bill or nonviolent offenders or the mentally ill. He said the most important thing is that a jury has to convict the offender a second time beyond a reasonable doubt. He reiterated that the issue was not protecting our children and grandchildren from the expense, but rather to protect them from the very few predators of society. He said he was amazed by the argument that they already have this in statute. He said that if that is the case, there would not be anymore costs. He did not think that age was a factor to the degree that the opponents proposed. He did believe that this proposed statute would be a deterrent. He suggested that child molesters should also be included in the bill.

HEARING ON SB 278

Opening Statement by Sponsor:

SEN. VIVIAN BROOKE, SD 33, said SB 278 would revise the laws relating to domestic violence.

Proponents' Testimony:

Judy Wang, Assistant Missoula City Attorney, Missoula Family Violence Council, summarized where SB 278 originated and why it was needed legislation. A committee drafted the bill and it was reviewed and amended by a district court judge, a justice of the peace and the Attorney General's office.

She said there were two logical divisions in the bill. The first addressed civil problems of victims of crimes, which involved restraining orders (TROs) (renamed orders of protection). She said that currently restraining orders are a subsection of Montana's marriage and divorce laws. She said that does not make sense since there are stalking victims and rape victims. The second division of the bill was the criminal changes in the laws impacting victims and abusers. They were asking that the crime called domestic abuse be renamed partner or family member assault and they were asking for minimum penalties so that assaults which occurred with the family would be treated like crimes.

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 3/7/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓ 8:45	✓	
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski			
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓ 8:00	✓	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

EXHIBIT 7
DATE 3/7/95
SB 66

March 7, 1995

Stan Frasier Testimony on SB 66

At the request of Gary Marbut, on the behalf of;

Montana Shooting Sports Association

Gun Owners of America

Citizens Committee For The Right To Keep and Bear Arms

Western Montana Fish and Game Association

Big Sky Practical Shooting Club

- 1) Most violent crimes are committed by previous offenders.
- 2) Guns and law abiding gun owners are often blamed for crimes involving guns.

Therefore we think that people who are repeat offenders should just stay behind bars.

EXECUTIVE ACTION ON SB 272

Motion: REP. ANDERSON MOVED SB 272 BE CONCURRED IN.

Discussion: REP. ANDERSON said this bill was intended to streamline the handling of paperwork and urged the committee to vote favorably for it.

Vote: The motion carried unanimously.

**Without objection from the committee REP. SMITH changed her vote on SB 372 from a yes to a no, making the final count 17 - 2.

EXECUTIVE ACTION ON SB 174

Motion: REP. SHEA MOVED SB 174 BE CONCURRED IN.

Discussion: REP. KOTTEL reported that she had discovered that the citizen review board had only met four times in Missoula. She said there was a lack of coordination regarding the social worker standards and citizen standards. Because of that it appeared that children were not going back to homes more quickly but instead going back much slower. She said the department believed the reason was that the citizen review boards were made up of people who held values and standards which they were attempting to impose on all the people involved resulting in the children being left in foster care longer even though the threat to the child was removed.

REP. CURTISS wondered if the program had had an opportunity to work and perhaps if the committee failed to pass the bill they would be cutting off the opportunity.

REP. LOREN SOFT was concerned about the fact that both the foster care review committee and the citizen review board were operating instead of one replacing the other.

CHAIRMAN CLARK announced that REP. BOHARSKI had a proposed amendment but he was absent from the meeting and so he recommended that the action be postponed.

EXECUTIVE ACTION ON SB 66

Motion: REP. MC GEE MOVED SB 66 BE CONCURRED IN.

Motion/Vote: REP. ANDERSON MOVED TO AMEND BY ADDING A COORDINATING INSTRUCTION TO REMOVING THE CRIME OF ARSON IF HB 64 PASSED. The motion carried unanimously.

Motion: REP. ANDERSON MOVED SB 66 BE CONCURRED IN AS AMENDED.

Discussion: REP. SHEA remembered that there was testimony requesting that child molestation be included in the list of crimes on this bill.

REP. KOTTEL was concerned about equity in the bill in protecting crimes against adults at a higher level than crimes against children. Her second question about the bill had to do with the broad definition of sexual assault.

REP. CURTISS asked if it was true that before anyone is ever convicted of a felony, they have been charged with innumerable previous felonies.

CHAIRMAN CLARK said many felons are convicted on the first offense. The percentage of repeaters is quite high for some felonies.

REP. SMITH clarified the provision in regard to date rape being a felony. She said, "So, if they date rape the first time, this wouldn't be affected, if there is a second date rape, it would be affected. And I know that interdepartmentally that they have classification levels of sex offenders." She said that if someone is incarcerated on a date rape felony, they would be allowed to be placed elsewhere outside the state prison. If he was convicted a second time of the same offense, he would have to have a life sentence under this statute and asked if that was correct.

CHAIRMAN CLARK said that was his understanding.

REP. SMITH said the interdepartmental classification of that made no difference. She supported the bill.

{Tape: 2; Side: A}

REP. ANDERSON felt they should not include sexual assault on a minor because there were cases the Department of Family Services (DFS) had gone after where the alleged abuses had not occurred. He said, "It is far too broad, it is any sexual contact, is what sexual assault and the minor part has to do with the child being under sixteen and three years younger than the perpetrator, so I think it is too broad a net."

REP. HURDLE said she liked the bill because she liked this idea of locking up predatory people but spoke against the bill because it was going to mean that every ten years they will have to build a new prison. It would mean 25 - 30 new FTE's and \$2 million per year just to house the offenders. She felt it was irresponsible to pass the bill without looking how they were going to do it financially. She was concerned about gutting other social programs and education or about seeing if the people wanted to pay increased taxes for it.

REP. CURTISS mentioned that this would be a strong deterrent. She thought that criminals would cease and desist or move to another state.

Motion: REP. KOTTEL MOVED TO AMEND SB 66 TO INCLUDE SECTIONS 45-5-625, MCA, AND 45-5-627, MCA.

Discussion: REP. KOTTEL said that this bill only addressed criminal convictions while the cases involving DFS which were alluded to are civil actions. She read the criminal statutes dealing with the sexual abuse of children and ritual abuse of children.

REP. HURDLE said that studies in other states have shown that this legislation does not deter crime or change the level of criminality in the culture but that it creates more of the same thing in a never ending "black pit."

REP. ANDERSON said REP. KOTTEL was right and said he was addressing a different statute which was brought up as one to be included. He used DFS as an example because it was discussed. He suggested segregating the two codes in the amendment and they continued to discuss the philosophical ramifications of the proposed amendments.

Motion: REP. KOTTEL MOVED THE SEGREGATION OF THE AMENDMENTS.

CHAIRMAN CLARK said that by agreement with REP. KOTTEL the amendments were segregated and asked the committee to focus on 45-6-625, MCA, in the amendment.

CHAIRMAN CLARK asked if it would be a two-strike offense or a three-strike offense.

REP. KOTTEL believed it should be a two-strike offense.

REP. HURDLE said they should consider what it would cost and figure that one of the biggest social costs is statutory rape, unwanted teen pregnancies and should be included.

CHAIRMAN CLARK said it would be included in the second amendment under consideration.

REP. MC GEE said they were paying for it now and elaborated on his response to REP. HURDLE.

REP. HURDLE wanted to consider how to prevent the crimes so that they would not have to be locked up. She wanted to figure out how to stop creating criminals through the lack of social programs. Her contention was that the money needed to be put at the front end through prevention programs.

CHAIRMAN CLARK responded by saying that this would stop it at the front end when those already engaged in these crimes are no

longer there and the others are going to see that if they do it, they would be gone and that to him was evidence of a deterrent.

REP. HURDLE asked to be shown one study or statistic which proved that this kind of a measure would lower crime and said that in states where it was tried it had not changed the crime rate.

CHAIRMAN CLARK said that it was too new to have statistics and that three strikes had only been around a short time in California and Georgia.

REP. HURDLE retorted that there are many studies in both states which refuted what he was saying.

REP. AHNER thought harsher penalties would be the deterrent and they would not have to build new prisons. She cited the deterrent for crimes in countries with harsh sentences and lower crime rates.

REP. SOFT believed they were going to have to build more prisons whether or not this bill was passed because of the rising crime rate in the country. The general public is saying that something is going to have to be done and knows there will be increased costs, he contended.

REP. SMITH said they could pay for it by taxing the pornographic activity that is going on. She believed there were ways to fund it. She said this amendment would cover this area and strongly supported the amendment.

Vote: The motion (on Kottel amendment 1) carried unanimously by voice vote.

Motion: REP. KOTTEL MOVED HER SECOND AMENDMENT TO INCLUDE 45-5-627, MCA, MINUS ALL SECTION EXCEPT SUBSECTION (B) UNDER RITUAL ABUSE OF MINORS.

Discussion: REP. KOTTEL elaborated on the provision she was asking to be included in the bill.

REP. MOLNAR asked if it was worthy of one of the cells under the two-strikes bill and expressed his reasons for the question.

REP. ANDERSON spoke against the amendment agreeing that there could be several other crimes which could be added and felt they should try it out for a while before adding this and similar crimes to those included under the two-strikes provision. He felt that there was sufficient provision for punishment of this particular crime in statute.

REP. KOTTEL said that if they were going to vote for this bill, she could not see how they could exclude the two most serious crimes against children while including basically all other crimes against adults. She agreed that if the judges were

enforcing the felony rules properly, they probably didn't need the bill. But if they were going to vote for it, it should include [the prosecution of] crimes that protect the children.

Vote: The motion carried 18 - 1, REP. ANDERSON voted no.

Motion: REP. ANDERSON MOVED SB 66 BE CONCURRED IN AS AMENDED.

Motion: REP. SOFT MOVED SB 66 BE AMENDED TO INSERT AFTER "ENROLL IN" "AND COMPLETE THE EDUCATIONAL PHASE OF THE SEXUAL OFFENDER PROGRAM" ON LINE 17, PAGE 9.

Discussion: CHAIRMAN CLARK explained that this dealt with first-time offenders in an attempt to prevent a repeat of the crimes.

Vote: The motion carried unanimously by voice vote.

Motion/Vote: REP. ANDERSON MOVED SB 66 BE CONCURRED IN AS AMENDED. The motion carried 16 - 3, REPS. WYATT, CAREY and HURDLE voted no.

EXECUTIVE ACTION ON SB 77

Discussion: REP. ANDERSON stated that there were no proponents for the bill and told how many votes it would take for it to pass both houses to be put on the ballot. He felt the bill was superfluous and that the sponsor had failed to cite any places where the current system needed to be corrected.

Motion/Vote: REP. ANDERSON MOVED TO TABLE SB 77. The motion carried 16 - 3, REPS. CLARK, SOFT and MC GEE voted no.

EXECUTIVE ACTION ON SB 353

Motion: REP. KOTTEL MOVED SB 353 BE CONCURRED IN.

Discussion: REP. KOTTEL discussed how this provision would parallel the federal system and how it would add to court efficiency and improve court administration. She felt it would also provide for a guardian ad litem for children.

REP. ANDERSON discussed his minor concern about the possibility of the provision for the exercise of favoritism through the bill. He said he would vote for it with reservations.

Vote: The motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 90

Motion: REP. KOTTEL MOVED TO RECONSIDER SB 90.



HOUSE STANDING COMMITTEE REPORT

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Mr. Speaker: We, the committee on Judiciary report that Senate Bill 66 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark

Bob Clark, Chair

Carried by: Rep. Menahan

And, that such amendments read:

1. Title, line 12.

Following: "45-5-503,"

Insert: "45-5-625, 45-5-627,"

2. Page 1, line 25.

Strike: "OR"

3. Page 1, line 27.

Following: "~~or~~"

Insert: ";

(iv) 45-5-625, sexual abuse of children; or

(v) 45-5-627, except subsection (1)(b), ritual abuse of a minor"

4. Page 6, line 15.

Insert: "Section 9. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person knowingly:

(a) employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) persuades, entices, counsels, or procures a child to

Committee Vote:

Yes 16, No 3.

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engage in sexual conduct, actual or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

(d) processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to sell, exhibits, or advertises any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

(e) possesses material referred to in subsection (1)(d); or

(f) finances any of the activities described in subsections (1)(a) through (1)(d), knowing that the activity is of the nature described in those subsections.

(2) (a) Except as provided in [section 1] and subsections (2)(b) and (2)(c) of this section, a person convicted of the offense of sexual abuse of children shall be fined not to exceed \$10,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both.

(b) If Except as provided in [section 1], if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be fined not to exceed \$10,000 or be imprisoned in the state prison for any term not to exceed 50 years, or both.

(c) A Except as provided in [section 1], a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(f) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if such an activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections and human services."

Section 10. Section 45-5-627, MCA, is amended to read:

"45-5-627. Ritual abuse of minor -- exceptions -- penalty.

(1) A person commits the offense of ritual abuse of a minor if the person purposely or knowingly and as part of any ceremony, rite, or ritual or of any training or practice for any ceremony, rite, or ritual:

(a) has sexual intercourse without consent with a person less than 16 years of age; commits assault, aggravated assault, or felony assault against a victim less than 16 years of age; or kills a person less than 16 years of age;

(b) actually or by simulation tortures, mutilates, or sacrifices an animal or person in the presence of the minor;

(c) dissects, mutilates, or incinerates a human corpse or remains in the presence of the minor;

(d) forces upon the minor or upon another person in the

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presence of a minor the ingestion or the external bodily application of human or animal urine, feces, flesh, blood, bone, or bodily secretions or drugs or chemical compounds;

(e) places a living minor or another living person in the presence of a minor in a coffin or open grave that is empty or that contains a human corpse or remains; or

(f) threatens the minor or, in the presence of the minor, threatens any person or animal with death or serious bodily harm and the minor reasonably believes that the threat will or may be carried out.

(2) This section does not apply to activities, practices, and procedures otherwise allowed by law.

(3) A Except as provided in [section 1], a person convicted of ritual abuse of a minor shall:

(a) for the first offense, be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, or both; and

(b) for a second or subsequent offense, be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, or both.

(4) In addition to any sentence imposed under subsection (3), after determining pursuant to 46-18-242 the financial resources and future ability of the offender to pay restitution, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

Renumber: subsequent sections

5. Page 9, line 17.

Following: "enroll in"

Insert: "and complete"

6. Page 13, line 11.

Insert: "NEW SECTION. Section 20. Coordination instruction. If House Bill No. 46 is passed and approved, then the crime of arson, 45-6-103, is deleted from the crimes listed in [subsection (1)(b) of section 1 of this act]."

-END-